Supreme Court, U.S.
FILED
09-794 DEC 8 - 2009
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NO.

In the
Supreme Court of the United States

ARNOLD DEWALT BEVERLY

Petitioner

vs.

UNITED STATES OF AMERICA

Respondent

SUPPLEMENTAL APPENDIX

ARNOLD DEWALT BEVERLY

P.O. Box 1203 Bakersfield CA 93302

[702] 418-7710 *ProSe*

SUPPLEMENTAL APPENDIX INDEX

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

No.1:08-cv-01538-AWI-GSA Eastern District of California Fresno Order before CHIEF UNITED STATES DISTRICT JUDGE ANTHONY W. ISHII ORDER DENYING EX PARTE APPLICATION AND ORDER TO ALL STATES.

On October 14, 2008, Plaintiff filed a document entitled "EX PARTE APPLICATION AND ORDER TO ALL STATES". Plaintiff states that time is of the essence in this matter. While Plaintiff does not state the procedural basis for his motion, it appears that he seeks some form of a temporary restraining order or preliminary injunction.

Preliminarily, the court notes that Plaintiff is asking for an ex parte order. Pursuant to Rule 65(b), Federal Rules of Civil Procedure, a temporary restraining order may be granted without notice to the adverse party

only if: 1) it clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss or damage will result before the adverse party can be heard in opposition, and 2) the applicant or the applicant's attorney certifies the reasons that notice should not be required. Plaintiff has not met this standard. Plaintiff has offered no reason why Defendant cannot be given an opportunity to respond to Plaintiff's request. Thus, Plaintiff's ex parte motion fails on its face.

Rule 65 of the Federal Rules of Civil Procedure allows for the issuance of a preliminary injunction as a provisional remedy. The legal principles applicable to a request for preliminary injunctive relief are well established. To prevail, the moving party must show either : "(1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor." Walczak v. EPL Prolong, Inc., 198 F3d 725,, 731 (9th Cir. 1999);

Oakland Tribune, Inc. v. Chronicle Publishing Company, Inc., 762 F.2d 1374, 1376 (9th Cir. 1985).

While Plaintiff's motion, declaration, and exhibits are unclear, it appears Plaintiff seeks a court order that orders all fifty states to give sufficient public notice to all voters that if they cast a write-in vote for Plaintiff as President of the United States their vote will be counted. Plaintiff then provides documents indicating that Plaintiff has tried to announce his write-in candidacy through regular media outlets, but these outlets have refused Plaintiff's press release because it appears too exact revenge or harm a person or group. Plaintiff appears to have asked Defendant for help in announcing his candidacy, but Defendant has not responded to Plaintiff's request.

Based on the confusing documents before the court, the court finds that Plaintiff has not shown a likelihood of success on the merits or even serious questions going to the merits of his case. It is unclear how this court has personal jurisdiction to make any order concerning

a state other than California. It is unclear how this court has subject matter jurisdiction to force Defendant to announce his candidacy. It is unclear if Plaintiff has exhausted his administrative remedies or if any exception to exhaustion occurs. It is unclear if Plaintiff even has a right to have Defendant announce his candidacy. Thus, no temporary restraining order or preliminary injunction can be issued at this time.

Accordingly, Plaintiff's ex parte application is DENIED.

IT IS SO ORDERED.

Dated: October 21, 2008 /s/ Anthony W. Ishii

CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

ARNOLD DEWALT BEVERLY,
Plaintiff,
v.
FEDERAL ELECTIONS COMMISSION,
Defendant.

Currently pending before the Court is defendant Federal Election Commission's ("FEC") motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The complaint in this case is vague, but essentially appears to be an ex parte application for injunctive relief based on Defendant's failure to assist Plaintiff in announcing his write-in candidacy for President of the United States. See Court's Docket Doc. No. 1. The Court denied the application. Subsequently, Plaintiff moved for partial summary judgment based on the FEC's refusal to act on his telephone calls and threat against Plaintiff to stop calling. See Court's Docket Doc. Nos. 6, 10. Plaintiff filed a further memorandum regarding partial summary judgment that was similar to the

first memorandum, but included a discussion relating to government oversight and the natural born citizenship status of the President of the United States. See Court's Docket Doc. No. 23.

The FEC filed a motion to dismiss in December 2008. See Court's Docket Doc. No. 18. The FEC argues that to the extent Plaintiff complains of a lack of action/failure to investigate, such claims may only be brought in the District of Columbia, as per 2 U.S.C. § 437g(a)(8). The FEC also argues that, to the extent Plaintiff is attempting to allege a different cause of action, he has identified no statute that waives sovereign immunity.

On January 21, 2009, Plaintiff filed an application for appointment of independent counsel. See Court's Docket Doc. No. 29. Plaintiff addresses the FEC's motions to dismiss and seems to argue that he wishes to pursue a RICO claim (18 U.S.C. § 1961 et seq.). See id. Dismissal of this case is appropriate. First, to the extent Plaintiff claims the FEC failed to act on or

investigate his administrative claim, such a claim must be brought in the Federal Court for the District of Columbia. See 2 U.S.C. § 437g(a)(8); Berg v. Obama, 574 F.Supp.2d 509, 525 (E.D. Pa. 2008); Beam v. Gonzales, 548

F.Supp.2d 596, 611-12 (N.D. Ill. 2008); Salo v. FEC, 2007 U.S. Dist. LEXIS 30855, 1-2 (E.D. Cal. Apr. 26, 2007). Although the complaint is bare of allegations regarding RICO and thus fails to state such a claim, to the extent that Plaintiff may be attempting to bring a RICO claim against the FEC, such a claim is improper. "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." FDIC v. Meyer, 510 U.S. 471, 475 (1994). Courts have held that RICO does not waive the sovereign immunity of the United States. See Peoples v. Wells Fargo Bank, 2008 U.S. Dist. LEXIS 8832, *7 (D. Nev. January 18, 2008); Jones v. Nat'l Commun. & Surveillance Networks, 409 F.Supp.2d 456, 466 (S.D. N.Y. 2006); Donahue v. FBI, 204 F.Supp.2d 169, 173-74 (D. Mass.

2002); Andrade v. Chojnacki, 934 F. Supp. 817, 831 (S.D. Tex. 1996); McMillan v. Department of the Interior, 907 F. Supp. 322, 326 (D. Nev. 1995); cf. McNeily v. United States, 6 F.3d 343, 350 (5th Cir. 1993) (the United States may not be a proper defendant in a RICO suit); Berger v. Pierce, 933 F.2d 393, 397 (6th Cir. 1991) (same); Peia v. United States Bankr. Courts, 152 F.Supp.2d 226, 234 (D.Conn. 2001) (same). Plaintiff cannot maintain a RICO claim against the FEC. Plaintiff has failed to establish jurisdiction and dismissal is appropriate.

Signed: January 27, 2008 /s/ Anthony W. Ishii

CHIEF UNITED STATES DISTRICT JUDGE

Accordingly, IT IS HEREBY ORDERED that: Defendant's Rule 12(b)(1) motion is GRANTED and this case is DISMISSED; All other pending motions are DENIED; and The Clerk shall CLOSE this case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 09-15562 D.C. No.1:08-cv-01538-AWI-GSA Eastern District of California Fresno Order before KOZINSKI, Chief Judge, PAEZ and TALLMAN, Circuit Judges.

A review of the record demonstrates that this appeal may be appropriate for summary disposition because the questions on which the decision in the appeal depends may be so insubstantial as not to justify further proceedings. Within 21 days from entry of this order, appellant shall show cause why the judgment in this appeal should not be summarily affirmed.

Filed April 07, 2009